



COUNTY OF NORTHAMPTON

OFFICE OF THE DISTRICT ATTORNEY

NORTHAMPTON COUNTY COURTHOUSE

669 WASHINGTON STREET

EASTON, PENNSYLVANIA 18042-7492

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JOHN M. MORGANELLI
DISTRICT ATTORNEY

October 1, 2007

Northampton County Republican Committee
Attention: Bob Kilbanks
P.O. Box 377
Nazareth, PA 18064

Dear Mr. Kilbanks:

Thank you for your letter of September 21, 2007 regarding mailings made during the 2007 primary election cycle. Specifically, you forwarded various mail pieces to me that were sent opposing the candidacy of Brian Monahan for district judge. You also raised the issue of a 30 day post-election financial filing signed by "John Doe."

Please be advised that "anonymous" mailings are an issue that this office has dealt with many election cycles. However, this office continues to rely on a legal opinion that was authored by the Office of Attorney General dated February 6, 1997 which basically opined that anonymous campaign literature is protected under the First Amendment. I note that you included in your packet of materials the case of *McIntyre v. Ohio Elections Commission*, 115 S. Ct 1511 (1995) in which the United States Supreme Court struck down a portion of the Ohio Election Code which prohibited the publication and distribution of anonymous campaign literature. The Office of Attorney General of Pennsylvania has consistently cited this case as the basis for its opinion that the Pennsylvania Election Code which requires disclosure of campaign materials would also be struck down as a violation of the First Amendment and, therefore, is unenforceable. In short, the U.S. Supreme Court has held that the freedom to publish anonymously extends beyond the literary realm and applies to political speech as well.

This year, after the mailings involving Mr. Monahan surfaced, I again wrote to Attorney General Tom Corbett and asked for a clarification as to whether the Office of Attorney General is still following the opinion dated February 6, 1997. I received a phone call from Richard Scheetz, the head of Criminal Division for the Office of Attorney General who indicated that they were still following the opinion letter of February 6, 1997. I am enclosing a copy of both my letter of May 31, 2007 to the Office of Attorney General seeking clarification as well as the original letter dated February 6, 1997 which sets forth the opinion that anonymous speech is protected speech.

In light of the history of this matter, it is my opinion that the provisions of the Pennsylvania Election Code requiring disclosure of campaign material is unenforceable and unconstitutional based upon the Supreme Court ruling. If someone has the right to send anonymous speech, which is protected under the First Amendment, then it follows that there cannot be a mandatory disclosure of filing information that would in fact disclose the identity of the sender of the anonymous speech. Therefore, it is my view that an anonymous filing of the expenditure for the anonymous speech would most likely be upheld. Until this office receives another opinion from the Office of Attorney General and/or a reversal of the precedent setting McIntrye decision, we will not attempt to enforce these provisions. I trust this answers your inquiry.

Very truly yours,

John M. Morganelli
District Attorney

JMM/lt



DISTRICT
ATTORNEY'S
OFFICE

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

February 6, 1997

D. MICHAEL FISHER
ATTORNEY GENERAL

Criminal Prosecutions Section
16th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-6346

The Honorable John M. Morganelli
District Attorney of Northampton County
Northampton County Government Center
Seventh & Washington Streets
Easton, PA 18042-7492

RE: Bethlehem Area School Board (Primary Election May 1995)
Our File #41-87

Dear District Attorney Morganelli:

The above-referenced matter was referred by you to the Office of Attorney General and, on August 29, 1995, this Office assumed jurisdiction of the matter for investigation and prosecution.

The complaining party in this matter is Chris Miller, the treasurer and representative of a slate of candidates for election to the Bethlehem Area School Board calling themselves the "Taxpayers for Excellence".

A May 15, 1995, advertisement in the Morning Call advocated the defeat of the "Taxpayers for Excellence" slate of candidates and supported the election of a rival slate of candidates. At the bottom of the advertisement ran the notation "paid for by Julie Venanzi and the Concerned Parents of BASD". Mr. Miller and his group have learned that Ms. Venanzi paid approximately \$950 to run this advertisement in the newspaper. As Mr. Miller points out, 25 Pa. C.S.A. § 3246 (g) requires that any person making such an "independent expenditure" in excess of \$100 must file documentation similar to that of a candidate or political committee.

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February 6, 1997
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School Board

Ms. Venanzi admits to paying approximately \$950 to place the advertisement and has indicated that she was totally unaware of any Election Code requirements which mandated that she files an expense report. Ms. Venanzi was not a candidate herself and further advised that when she placed the advertisement she was acting as a "concerned parent" and not at the behest of any political organization.

The Election Code provides that any violation of the Act constitutes an unclassified misdemeanor. However, the Code also provides for a settlement of disputes such as the present one without resorting to criminal sanctions. 25 Pa. C.S.A. § 3252 establishes a per diem fine for failure to file reports or statements of expenditures and contributions. This section establishes a maximum late fee of \$250 with respect to a single report. Consultation with the Department of State revealed that matters such as the present one are commonly resolved under § 3252 without resorting to criminal sanctions. The Department of State also advised that such a remedy would be appropriate in this instance. Thus, in November of 1996, this Office sent a letter to Ms. Venanzi in which she was directed to comply with § 3252 and pay the appropriate \$250 penalty in lieu of possible criminal sanctions.

Please be advised that the Northampton County Voter Registration Office has advised that Ms. Venanzi had indeed paid the \$250 late fee in lieu of criminal prosecution. This portion of Mr. Miller's complaint is therefore considered closed by this Office.

The "Taxpayers for Excellence" group also complains that they should have received prior notice of the Venanzi advertisement in the Morning Call in accordance with 25 Pa. C.S.A. § 3258 (b). This section requires notice to the opposing candidate of any advertisement which is to be broadcast or published during the one hundred and twenty (120) hours immediately prior to an election. However, the Pennsylvania Supreme Court in Commonwealth v. Wadzinski, 422 A.2d 124, 492 Pa. 35 (1980), declared as unconstitutional a former section of the Election Code which required a candidate to give reasonable notice to an opponent of any advertisement which referred to the opponent. The Court determined that the notice requirement unreasonably restricted protected speech in contravention of the First and Fourteenth Amendments.

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Based upon the Wadzinski decision it is the position of the Office of the Secretary of the Commonwealth that § 3258 (b) is unenforceable.

This aspect of the complaint of the "Taxpayers for Excellence" therefore appears to be lacking in prosecutorial merit.

The "Taxpayers for Excellence" group also voiced concerns about 4"x6" slate cards which were passed out at the polls on election day. These slate cards advocated the election of a rival group of candidates and bore the notation "Paid for by Friends of the BASD". Since there is no documentation which registers the "Friends of the BASD" as a political committee or group, the "Taxpayers" group complains that the disclosure in advertising requirements of the Election Code have been violated.

In McIntyre v. Ohio Elections Commission, 115 S. Ct. 1511 (1995), the United States Supreme Court struck down a portion of the Ohio Election Code which prohibited the publication and distribution of anonymous campaign literature. The plaintiff in McIntyre had distributed campaign literature which bore the notation "Concerned Parents and Taxpayers" (similar to the present case in which the handout cards stated "Friends of the BASD") and had been charged with a violation of the Ohio Election Code which required that such literature clearly state the name and address of the person who made or financed the expenditure. The U.S. Supreme Court determined that the freedom to publish anonymously extended beyond the literary realm and ruled that this section of the Ohio Election Code was an unconstitutional restriction on freedom of speech in violation of the First Amendment.

Therefore, it appears that the complaint of the "Taxpayers" group regarding violation of the disclosure in advertising requirements of the Election Code would probably not withstand constitutional challenge. This stance is consistent with this Office's position in similar cases involving this section of the Election Code.

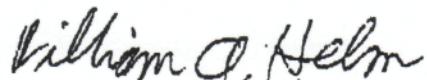
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Finally, the "Taxpayers" group also complains that a rival candidate, Rosario Amato, filed his campaign expense reports one day late, subjecting him to a fine totaling \$20. Please be advised that Amato has paid the fine and provided this Office with a receipt indicative of same.

Based upon the above, this entire matter is now considered closed by this Office. We thank your Office for the referral. Should you have any questions or concerns, please do not hesitate to contact me or Deputy Attorney General Robert J. O'Hara directly at 717-963-3034.

Please accept my best regards.

Very truly yours,



WILLIAM A. HELM
Chief Deputy Attorney General

WAH/xng



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JOHN M. MORGANELLI
DISTRICT ATTORNEY

May 31, 2007

Attorney General Thomas W. Corbett, Jr.
16th Floor Strawberry Square
Harrisburg, PA 17120

Re: Enforcement of Pennsylvania Election Law

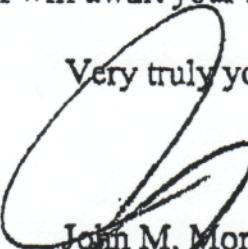
Dear Attorney General Corbett:

The purpose of this correspondence is to ask for a clarification from the Office of Attorney General regarding the enforcement of Pennsylvania's Election Law. As you know, the Pennsylvania Legislature has granted concurrent jurisdiction with district attorneys and the Office of Attorney General relative to enforcement of the Election Law. Every election cycle, issues come to this office relative to potential Election Law violations. On a number of occasions in the past, I have referred cases to the Office of Attorney General when I perceived a potential conflict of interest in this office.

I am enclosing a copy of a letter dated February 6, 1997 that was sent to me by then Chief Deputy Attorney General William A. Helm relative to the enforcement of specific sections of the Election Law. Specifically, I am interested in ascertaining as to whether or not the Office of Attorney General still opines that the sections dealing with the disclosure in advertising requirements of the Election Code are unconstitutional in reliance on the case of *McIntyre v. Ohio Elections Commission*. Since this letter, my office has routinely informed complainants that the requirements that mandate that individuals disclose with a disclaimer on campaign material the source of the vendor, etc. is unenforceable.

In essence, I am asking for an update as to the position of the Office of Attorney General so that my office can be consistent with you relative to the interpretation of the Election Code. I will await your response.

Very truly yours,


John M. Morganelli
District Attorney

JMM/lt
Enclosure